

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

April 24, 2012

In the Matter of SHARP, Minors.

No. 306227

Kent Circuit Court

Family Division

LC Nos. 10-051958-NA

10-051959-NA

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interests of the children. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), which provides:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

We conclude that the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(c)(i). The condition that led to the August 2010 order of adjudication in this case was respondent's marijuana use, and the record evidence does not show that respondent resolved this substance-abuse issue. Respondent admitted using marijuana in December 2010. Respondent testified that he did not use drugs in 2011. However, respondent missed three drug tests in January 2011 and February 2011. And, although respondent had a negative drug test on April 15, 2011, he tested positive for marijuana on March 19, 2011, and again on May 20, 2011, which indicated drug use up to three months before the test. Respondent did not take additional random drug tests after May 20, 2011, until the termination hearing because he did not meet and keep in contact with his caseworker to obtain drug tests; respondent missed two appointments with his caseworker in June 2011 and did not reschedule.

Respondent argues that there was insufficient evidence to terminate his parental rights because he completed a drug treatment program at Arbor Circle. We do not agree. While respondent testified that he completed a drug treatment program at Arbor Circle, there was no evidence that he benefited from the program given his recent drug use, missed drug tests, and failure to meet and keep in contact with his caseworker to perform additional drug tests. Respondent was not subjected to drug tests at Arbor Circle to monitor his marijuana use. And, because of respondent's failure to meet and keep in contact with his caseworker, his caseworker was unable to obtain an evaluation of respondent's treatment at Arbor Circle to determine whether he benefited from the program. To demonstrate that he was a fit parent, respondent needed to maintain sobriety for a six-month period. It is well established that compliance with a treatment plan alone does not suffice; a parent must also benefit from the treatment plan and the services provided. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005), superseded by statute on other grounds in MCL 712A.19b(5).

Accordingly, the trial court did not clearly err when it concluded that MCL 712A.19b(3)(c)(i) provided a statutory basis for termination given the evidence that respondent had not rectified his substance abuse.

The court also did not clearly err when it concluded that termination of respondent's parental rights was in the children's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5); accord MCR 3.977(H)(3). The evidence demonstrates that respondent was bonded with his children and appropriately interacted with them during visitation. However, respondent did not rectify his substance-abuse problem. And his children had been in protective care for over one year, i.e., since June 2010. They could not be expected to wait any longer for respondent to demonstrate that he could remain drug free; the children were young and needed permanency, which respondent could not provide. See *In re VanDalen*, 293 Mich App 120; ___NW2d___ (2011) (considering child's need for stability and permanency), slip op at 11.

Respondent argues that petitioner's caseworkers failed to make reasonable efforts toward reunification. We disagree. The record shows that it was actually respondent's own insufficient effort that prevented reunification with his children. When the children first came into care, respondent visited his children but indicated that he did not wish to participate in services, relying instead on the efforts of the children's mother. After respondent decided to participate in a treatment plan in December 2010, the caseworker never heard from him and sent a letter requesting contact. Respondent waited until March 2011 to begin participating in his treatment plan. Respondent was referred for substance-abuse services in April 2011; however, respondent did not participate until months later. And, when he did, respondent did not notify his caseworker of his participation in substance-abuse services so that she could track his progress. Respondent also failed to appear for scheduled meetings with his caseworker and did not reschedule. Respondent's caseworker provided respondent with her contact information on both a "to do list" and a business card. Respondent explained his lack of contact with his caseworker by stating that he lost her telephone number. Furthermore, there is no evidence that respondent advised the caseworker that he had scheduling conflicts that affected his ability to meet with her and provide requested drug screens. Indeed, respondent's caseworker would at times visit with respondent during parenting time to schedule appointments for him to meet with her, but it "did not seem to make a difference in aiding him and getting him to [meet] with [her]." The court did not clearly err in finding that petitioner made reasonable efforts toward reunification.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Amy Ronayne Krause